

June 17, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REVISED REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500057**

BARRY MONICAL
Code Enforcement Appeal

Location: 36655 – 45th Avenue South

Appellant: **Barry Monical**
36655 – 45th Avenue South
Auburn, Washington 98001
Telephone: (253) 661-2851

King County: Department of Development and Environmental Services
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal; extend compliance dates
Examiner's Decision:	Deny appeal; extend compliance dates

EXAMINER PROCEEDINGS:

Hearing Opened:	May 18, 2005
Hearing Closed:	May 18, 2005
Initial Decision Issued:	June 7, 2005

Participants at the public hearing¹ and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

¹ Mr. Monical did not attend the hearing. The DDES representative testified that he had received a telephone call to the effect that Mr. Monical was ill, but testified that there was no request for postponement of the hearing, and no such request was received by the Hearing Examiner's Office. The Examiner accordingly is relying on the appeal statement as Mr. Monical's defense to the Notice and Order.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On March 15, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Barry Monical that alleges code violations at property located at 36655 – 45th Avenue South. The Notice and Order cites the property for violations for:
 - “1. Accumulation of inoperable vehicles and vehicle parts throughout the premises of this residential site in violation of Sections 21A.32.230 and 23.10.040 of the King County Code. Parking/storage of vehicles on non-impervious (unimproved) surfaces in violation of Section 21A.18.110 (I) of the King County Code.
 - “2. Accumulation of assorted rubbish, salvage and debris (including but not limited to household goods, appliances, scrap metal, scrap wood, glass and plastic) throughout the premises of this residential site in violation of Section 21A.32.230 of the King County Code and Section 307 of the 2003 International Property Maintenance Code.
 - “3. This residence is substandard in the following instances: Inadequate weatherproofing due to deterioration of roofing material, (304.2, 304.6 IPMC). Inoperative and/or missing smoke detector (704.2 IPMC), broken windows (304.13 IPMC), broken wall, ceiling and floor coverings (305.3 IPMC), occupied recreational trailer in violation of sections 16.02.240 and 21A.28.020 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.

“These substandard conditions violate 16.14.100 of the King County Code and Sections of the 2003 International Building Code.”

The Notice and Order required that by April 15, 2005, inoperable vehicles be removed from the site, as well as vehicle parts, or stored in a fully enclosed building, that permissible vehicles no longer be parked on non-impervious surfaces, and that the premises be cleared of assorted rubbish, salvage and debris. The Notice and Order also required that by April 29, 2005, human occupancy of two recreational trailers onsite be ceased and if not owned by the property owner the trailers be removed from the premises, and that repairs and/or corrections necessary to comply with the 2003 International Property Maintenance Code be performed for the conventional structure onsite. Alternatively, the residence and premises could be vacated and closed to entry until approved for occupancy by DDES.
2. Appellant Monical, owner of the property, filed a timely appeal of the Notice and Order. The appeal raises the following claims:
 - A. The conventional residence onsite is elderly in nature and the interior repairs are being performed gradually as finances permit.
 - B. If the Appellant is required to install impervious parking surfaces, his neighbors should also be required to do so.

- C. The Appellant stipulates to the need for cleaning up the grounds of the property, but argues that the Appellant's neighbors should also be held to the same standards of property maintenance.
3. The evidence in the record supports a finding that the charges of the Notice and Order are correct.
 4. DDES offered recommendations regarding the deadlines for compliance, given the time taken up by the appeal, which are reflected in the Order below.

CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the property when other properties have similar violations is an equity issue over which the Examiner has no authority. It is tantamount to a claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.
2. As the violations charged in the Notice and Order have been shown to have occurred, the Notice and Order is found correct and shall be sustained. As the deadlines for compliance have been obviated by the time taken up by the appeal, new deadlines shall be imposed in the Order below.

DECISION:

The appeal is **DENIED** except that the deadlines for regulatory compliance are revised and extended as stated in the following order.

REVISED ORDER:

1. Remove inoperable vehicles and vehicle parts from the premises or store these materials within a fully enclosed building by *no later than* **July 8, 2005**.
2. Cease parking/storage of operable vehicles on non-impervious surfaces by *no later than* **August 15, 2005**.
3. Remove assorted rubbish, salvage and debris from the premises by *no later than* **July 8, 2005**.
4. Cease occupancy of the recreational trailers **immediately** and remove recreational trailers not owned by the property owner or legal tenant from the premises by *no later than* **July 8, 2005**.
5. Evaluate the integrity of the roof of the conventional residence onsite by no later than **July 8, 2005** and make the necessary repairs and/or corrections so that the structure(s) and premises meet the minimum standards of the 2003 International Property Maintenance Code by **August 15, 2005**.

6. (Added with revision) No penalties shall be assessed against the Appellant or his property if the above conditions are met. If any of the deadlines stated in the above conditions is not met, DDES may assess penalties against the Appellant and the property retroactive to the date of this revised order.

REVISED ORDER ISSUED this 17th day of June, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 17th day of June, 2005 via certified mail to the following:

Barry Monical
36655 – 45th Avenue South
Auburn, Washington 98001

TRANSMITTED this 17th day of June, 2005, to the following parties and interested persons of record:

Barry Monical
36655 - 45th Ave. S.
Auburn WA 98001

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

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Lamar Reed
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's revised decision shall be final and conclusive unless proceedings for review of the revised decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's revised decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 18, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. E0500057.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was DenoBi Olegba, representing the Department. There were no other participants in the hearing.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report for 5/18/05
- Exhibit No. 2 Notice and Order issued 3/15/05
- Exhibit No. 3 Notice and Statement of Appeal dated 3/23/05
- Exhibit No. 4 Copy of codes cited in Notice and Order
- Exhibit No. 5 a-f & h-y Photographs (color copies) of subject property
- Exhibit No. 6 a Letter to Barry Monical from Officer Olegba dated 1/20/05
 - b Email date 1/19/05 re: citizen complaint, reference no. 312
 - c Notice, Do Not Occupy for 36655 – 45th Ave. S., travel trailer, dated 2/09/05
 - d Notice, Do Not Occupy for 36655 – 45th Ave. S., travel trailers, dated 2/09/05

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